

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In Re:)
)
AREDIA and ZOMETA PRODUCTS) No. 3:06-md-01760
LIABILITY LITIGATION) Judge Campbell/Brown
(MDL No. 1760))
)
This Document Relates to)
Case No. 3:07-cv-01071 (Avila))

To: The Honorable Chief Judge Todd J. Campbell

REPORT AND RECOMMENDATION

Plaintiff has filed a Motion to Remand. (Docket Entry 6227). Defendant NPC has opposed this Motion. (Docket Entry 6253). This case was taken out of Wave III on October 28, 2011 due to Dr. Marx's revised opinions based on additional research. (Docket Entry 5257). The case was essentially placed on a separate briefing schedule pending the completion of expert discovery. *Id.* Plaintiff argues that NPC has examined Dr. Marx about the new research and revised opinions and that, under the new MDL procedures, this case is ripe for remand, as all fact and expert discovery has been completed.

NPC argues that additional time is needed ,and this case is not yet ripe for remand. NPC has consulted with an oral pathologist to rebut Dr. Marx's new article and revised opinion, and she is currently preparing a report. NPC proposes a telephone status conference in approximately thirty (30) days to discuss the progress of expert discovery and possibly set a schedule for remand. NPC believes this case will be ready for remand by March 15, 2013, the remand date for the first group of 112 cases.

The Magistrate Judge believes this case is not yet ready for remand. Therefore, the

undersigned **RECOMMENDS** Plaintiff's Motion to Remand be **DENIED**. A telephone conference to discuss the status of expert discovery in this case and a date for remand will be held on **December 18, 2012 at 2 p.m. CST**. The parties shall call 615-695-2851 at the appointed time.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from receipt of this Report and Recommendation in which to file any written objection to it with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 (1985); *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004 (en banc)).

ENTERED this 19th day of November, 2012.

/S/ Joe B. Brown

JOE B. BROWN

UNITED STATES MAGISTRATE JUDGE